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97 944 SEP 12 1997

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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1997

Jason R. Craddock; David J. Lytle,
Petitioners,

v.

The Circuit Court of Prince William
County, Virginia,
Respondent.

Petition for a Writ of Certiorari to the
United States Court of Appeals for the
Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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56 pp.

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QUESTIONS PRESENTED

1. Whether lower federal courts may bar the right of access to courts to litigants of federal constitutional claims by:

• refusing jurisdiction over cases where substantial federal constitutional questions arise out of state trial court proceedings, and state adjudicative channels foreclose the federal constitutional question from presentation for review in this Court; and

• dismissing a complaint as frivolous sua sponte when the pro se complainant paid a filing charge, and the complaint contained arguable bases in fact and law.

2. Whether state trial courts which exclude evidence to be entered at trials (pursuant to no discovery rule) violate the Sixth and Fourteenth Amendments to the United States Constitution, when such exclusions nullify the fundamental rights of the defendant to present his defense, to compel witnesses for his defense, and to conduct a full and fair jury trial.

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Petitioners Jason R. Craddock and David J. Lytle request a writ of certiorari to the United States Court of Appeals for the Fourth Circuit.

OPINION BELOW

The opinion in the case below is unpublished, cited only as "No. 96-1910," in the United States Court of Appeals for the Fourth Circuit. The case below was decided on appeal from the United States District Court for the Eastern District of Virginia, at Alexandria (CA-96-628-A). The Court of Appeals rendered decision on April 17, 1997, and a timely filed petition for rehearing was denied by the court on June 16, 1997. This petition was filed in this Court on September 12, 1997, originally. Herein is a revision, per request of the Clerk of this Court (Rule 14.5).

JURISDICTIONAL STATEMENT

This Court has jurisdiction over this case under 28 U.S.C. §1254, and U.S. Const. Art. III, §2. Petitioners asserted federal question jurisdiction, 28 U.S.C. §1331, as the basis for bringing the action in federal court. The Court of Appeals decided on April 17, 1997, and a timely petition for rehearing was denied June 16, 1997.

CONSTITUTIONAL AND STATUTORY PROVISIONS

- **U.S. Const. Amend. VI**: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compusory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.
- **U.S. Const. Amend. XIV, §1**: All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor to deny to any person within its jurisdiction the equal protection of the laws.
- **28 U.S.C. §1915(e)(2)(i)**: Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that -- (A) the allegation of poverty is untrue; or (B) the action or appeal
-- (i) is frivolous or malicious . . .
- **28 U.S.C. §1331**: The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.
- **28 U.S.C. §1257(a)**: Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State

is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

STATEMENT OF THE CASE

On November 23, 1991, Petitioners blocked the front entrance to the Prince William Women's Clinic, an abortion facility in Manassas, Virginia. Petitioners blocked the entrance intending to prevent women from entering the clinic to procure abortions. Petitioners never engaged in violence. Within hours, Petitioners were arrested for trespass. On April 3, 1992, a jury convicted them and fined them $2500 each. Just prior to the trial, presiding Prince William County Circuit Court Judge Richard Potter granted two motions in limine to the trial's prosecutor, Manassas Assistant City Attorney Peter Steketee (App. J).

The first requested that the court enter "an order excluding from the trial of this case any testimony and evidence, documentary or otherwise, as to whether abortions were or were not being conducted on the premises" of the clinic November 23, 1991. Steketee filed this motion because the evidence related to matter which he considered "not an issue in this case and the introduction of any evidence relating to said abortions in said facility, whether conducted or not, could be prejudicial to the trier of this case; . . . is irrelevant and immaterial"

The second motion asked the court to exclude "any testimony and evidence, documentary or

otherwise, from any physician or professional health care provider, or any other person, as to whether an abortion constitutes the taking of a life, murder, assault, or any other crime." This motion was made because "[t]he law in Virginia is clear and without equivocation that abortions conducted and performed in accordance with said law are permissible and within the law." The motion further stated that such testimony and evidence (specifically that of a health care provider) is "irrelevant, immaterial, and contrary to the laws of [Virginia] and could be prejudicial to the trier of this case."

The trial issue presented to the jury was thus limited to the question of whether or not the Petitioners were guilty of trespass on November 23, 1991. The motions in limine effectively barred the Petitioners from 1) presenting their defense to the jury, and 2) presenting witnesses and evidence on their behalf. The "defense" would have been articulated as follows:

- in good faith, the Petitioners believe that human life and personhood begin at the point of conception;
- trespassing for the sake of saving human lives is lawful;
- the Petitioners trespassed upon the Clinic property for the sole purpose of saving the lives of human beings (preborn children) whom they knew would be killed via abortion; and
- the Petitioners would have testified and demonstrated to the effect that 1) their "action was necessary to avoid an imminent threatened harm," 2) there was "a lack of other adequate means to avoid the threatened harm," 3) and there was "a direct causal relationship that may be reasonably anticipated between the action taken and the avoidance of harm." Buckley v. City of Falls Church, 371 S.E.2d 827, 827-

28 (1988) (citing U.S. v. Cassidy, 616 F.2d 101, 102 (4th Cir. 1979)).

The presentation of this defense was barred by the granting of the motions in limine. The above "defense" would have been offered with the support of the following testimony and evidence:

- records of the Clinic showing that abortions indeed took place on November 23, 1991 (when Petitioners blocked the Clinic entrance); and
- a physician would have given testimony and evidence to the effect that human life begins at conception, thus substantiating the reasonableness of the Petitioners' beliefs that their trespass purported to save actual lives from imminent death.

The presentation of this evidence and testimony was barred by the motions in limine, and by a motion to quash a subpoena duces tecum served on the clinic (which requested records of Clinic activity on November 23, 1991) -- both of which motions were granted by Judge Potter. The judge would have allowed the testimony only out of the presence of the jurors, after his adoption of their guilty verdict (App. J).

Petitioners appealed the decision of the circuit court to the Virginia Court of Appeals, and then to the Virginia Supreme Court. While Petitioners raised one of the federal constitutional issues (the Sixth Amendment issue) in their appellate briefs in the state court appeals, the state courts patently ignored and failed to preserve this issue. The Virginia Court of Appeals, in an unpublished memorandum of August 24, 1993, (App. E) never mentioned the federal constitutional issue in its opinion affirming the convictions. The opinion never even mentioned that it would rule on independent state grounds alone, either. Craddock, et.al. v. Manassas, Court of Appeals No.

0958-92-4. Petitioners had indeed raised the constitutional question both in briefs and oral argument before the Virginia Court of Appeals.

As a result of the failure of the Virginia Court of Appeals to preserve the constitutional issue, the Virginia Supreme Court declined to hear Petitioners' appeal from the Virginia Court of Appeals, because "the decision of the Court of Appeals does not involve a substantial constitutional question as a determinative issue on matters of significant precedential value" (App. H).

In April, 1996, Petitioners filed a complaint against the Circuit Court of Prince William County, Virginia, in the United States District Court, Eastern District of Virginia, Alexandria Division. Their complaint rested upon 28 U.S.C. §1331 (federal question jurisdiction). The complaint alleged that the Circuit Court of Prince William County deprived Petitioners of their Sixth and Fourteenth Amendment rights to a fair jury trial (by denying them the right to present their testimony and witnesses), and additionally, that the Circuit Court deprived them of their equal protection rights, by denying them fundamental rights based on their status as a class -- namely, prolife criminal defendants at the trial level whose adjudged activity arose out of their opposition to abortion. (Petitioners intend to show via discovery that such discriminatory practices exist.)

Petitioners sought relief in the form of a dismissal of their convictions, or alternatively, a remand of the case to the Prince William Circuit Court with instructions to allow them to present their defense and witness testimony to the jury. In addition, Petitioners sought injunctive relief to stop the accrual of interest on the fines, and to prevent enforcement thereof, pending the final disposition of

this case.

Petitioners brought their actions under the Fourteenth Amendment, but mistakenly believed that a four year statute of limitations applied (they applied the 42 U.S.C. §1983 statute of limitations, though they did not mention or apply §1983 anywhere in their complaint). Petitioners paid their filing charge by check, which was sent with the complaint. Shortly after what Petitioners believed was the deadline for filing their complaint, Petitioner Craddock received a call from the Clerk's Office of the District Court, informing him that the check for the filing charge was missing, and that a copy of signatures (rather than originals) had been sent.[1] Petitioners then sent another complaint with original signatures, and another check, along with a motion for exception to (what they believed erroneously was) the statute of limitations. District Court Judge James Cacheris used the opportunity to dismiss Petitioners' Complaint sua sponte, with prejudice, as frivolous, with no stated grounds for so ruling (App, D).

Petitioners then appealed this decision to the United States Court of Appeals for the Fourth Circuit, which affirmed the decision below because of lack of subject matter jurisdiction in lower federal courts, relying on D.C. Court of Appeals v. Feldman, 460 U.S. 462 (1983), which held that the decision of the District of Columbia Court of Appeals (the highest D.C. court) to refuse admission to the D.C. Bar of two applicants was judicial in nature, and from the highest court in D.C., and therefore not subject to the subject matter jurisdiction of the United States District Court for the District of Columbia Circuit.

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[1] Petitioners admit the mistake of inadvertently sending a copy of signatures, but contend that the Clerk lost their initial check.

REASONS FOR GRANTING CERTIORARI

I. THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT DENIED PETITIONERS DUE PROCESS RIGHTS TO ACCESS TO THE COURTS BY DECLINING JURISDICTION ERRONEOUSLY OVER THEIR CONSTITUTIONAL CLAIM.

> "The right of access to the courts . . . is founded in the Due Process Clause and assures that no person will be denied the opportunity to present to the judiciary allegations concerning violations of fundamental rights." Wolff v. McDonnell, 418 U.S. 539 (1974), at 579.

While this Court has typically adjudicated the right of access to the courts in relation to prisoners seeking relief while incarcerated, there are no statutes or holdings of any case which limit the assertion of this right to prisoners. Granting certiorari would yield more specific definition to the application of this due process right by setting forth a decision as to how non-incarcerated persons may be protected in "present[ing] to the judiciary allegations concerning violations of fundamental rights."

1. The United States Court of Appeals Erred in Affirming the Dismissal of Petitioners' Case for Lack of Subject Matter Jurisdiction, Because Lower Federal Courts Have Jurisdiction Over Federal Constitutional Questions Which Arise Out of Lower State Trial Court Proceedings.

The decision of the United States Court of

Appeals for the Fourth Circuit, dismissing Petitioners' case for lack of subject matter jurisdiction, presents an issue of first impression, as well as a need for clarification, to the realm of federalism, specifically with respect to the element of due process known as access to the courts. This issue of Petitioners' case warrants a decision which will inform the citizens of the country of what their rights are to receive adjudicative redress when their federal constitutional rights are violated. The pertainent questions relate to situations where state courts of appeals foreclose any hope of review (by this Court) of the federal constitutional claims of litigants whose claims arise out of practices in trial proceedings in these state courts. The foreclosure happens when state appellate courts ignore and fail to acknowledge and preserve federal constitutional questions raised by the litigants. Does a remedy[2] exist in federal courts, which would provide for litigants to present such federal constitutional claims, after the claims have been snuffed out by state appellate and supreme courts' failure to preserve such constitutional questions (thus barring review in the United States Supreme Court)?

Petitioners answer that such a remedy exists in the form of bringing actions in lower federal courts, under their original jurisdiction over federal questions (28 U.S.C. §1331). Petitioners submit that the constitutional violations effected by lower state trial court proceedings are "federal questions," for the

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[2] Such a remedy would be analogous to the traditional remedy of federal habeas corpus relief, which follows exhaustion of state remedies in criminal convictions. Cf. Gilmore v. Taylor, 113 S.Ct. 2112 (1993). The habeas corpus remedy would not be available to Petitioners in the instant case because they were fined, rather than incarcerated.

purposes of §1331. This Court has not held otherwise.

Federal statutes and the decisions of this Court on this matter only proscribe lower federal courts from assuming original jurisdiction over final decisions of the highest state courts, rather than proceedings in lower state trial courts. 28 U.S.C. §1257 states that review of final determinations of the highest state courts may obtain in the United States Supreme Court. D.C. Court of Appeals v. Feldman, 460 U.S. 462 (1983), echoes this rule, holding that the decision of the District of Columbia Court of Appeals (the highest D.C. court) to refuse admission to the D.C. Bar of two applicants was judicial in nature, and from the highest court in D.C., and therefore not subject to the subject matter jurisdiction of the United States District Court for the District of Columbia Circuit.

In its recent decision against Petitioners, in the instant case, the United States Court of Appeals for the Fourth Circuit affirmed the decision of the United States District Court to dismiss their case. The District Court dismissed with prejudice on a frivolity determination, and the Court of Appeals stated that it affirmed the decision below, although it's reasoning differed from that of the prior dismissal. The Court of Appeals affirmed the dismissal of Petitioners' case because of a lack of subject matter jurisdiction. (The Court of Appeals did not address the frivolity issue.) Namely, since Petitioners challenged a state court decision by bringing an action in federal district court, the district court lacked jurisdiction, based on 28 U.S.C. §1257, Feldman, and another case, Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923). Like Feldman, Rooker held that because the jurisdiction of the lower federal courts is sheerly original, they cannot obtain jurisdiction conducive to review of a decision

from the highest court of a state; only the United States Supreme Court, a federal court with appellate jurisdiction, may review "conclusive adjudication[s]" from the highest state courts.

In §1257, Rooker, and Feldman, federal district courts may not have jurisdiction to review the **final decisions** of the **highest state courts**. "Highest state courts" refer to state supreme courts and the D.C. Court of Appeals, which is the highest nonfederal court of D.C. for purposes of §1257. Feldman, id. (In cases where the state supreme court refused to hear the claim, the state appellate court decisions are considered final.) "Final decisions" are those federal questions which have been determined by the highest state court once for all, leaving no place for decision on them in any other court of that state (though the nonfederal questions may be subject to redetermination). See Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975), Pennsylvania v. Ritchie, 480 U.S. 39 (1987), and Goodyear Atomic Corp. v. Miller, 486 U.S. 174 (1988).

Petitioners are neither appealing a final decision nor a non-final decision of the highest court in Virginia. Petitioners are not even appealing the decision of the Prince William County Circuit Court, necessarily. Rather, they are claiming that the proceedings (not the decision) of their trial of April 3, 1992, violated their rights under the Sixth and Fourteenth Amendments to the United States Constitution. One item of significance which evidences this fact is that the original action in state court was titled Craddock, et.al. v. the City of Manassas. The federal action was never against the city of Manassas, Virginia, as in an appeal from a criminal conviction or state civil case. Rather, the federal action was an original action brought against the circuit court for its trial conduct, which

Petitioners contend was violative of their federal Constitutional rights. Feldman, Rooker, and §1257 may only bar jurisdiction in lower federal courts when such jurisdiction is sought to obtain over a highest, final, state decision. Had Petitioners sought federal district court review of a Virginia Supreme Court decision (or even a Virginia Court of Appeals decision to which the State Supreme Court denied certiorari or appeal), then §1257, Feldman and Rooker would apply, barring such jurisdiction.

It should be noted that Cox, Goodyear, and Ritchie, supra, all stand for the proposition that this Court seeks to obtain jurisdiction over claims involving federal constitutional rights, where declining jurisdiction would mean not having it over such claims at a later time. Petitioners submit that this Court should allow (among the ways enumerated in Cox for obtaining review over constituional claims arising out of state proceedings) lower federal courts to review federal questions which arise out of practices in state trial court proceedings, in actions which do not sound in habeas corpus.

Nothing in Feldman and Rooker, nor in §1257, indicate that federal district courts may not have jurisdiction to review federal questions arising out of state trial court non-final proceedings. In fact, nothing in these decisions nor in §1257 indicate that lower federal courts may not have jurisdiction to review federal questions arising out of state trial court decisions. Consequently, whether this Court decides that Petitioners' federal question arises out of the state trial court's proceedings or its decision does not matter; Feldman, Rooker, and §1257 may not bar jurisdiction of their claim in lower federal courts. The Court of Appeals' implication that federal questions may not arise out of state trial court proceedings or

decisions (for the purpose of obtaining review in lower federal courts), rested on an erroneous reading of Feldman, Rooker, and §1257.

To deny this petition for certiorari, viz., to affirm the decision of the Court of Appeals in this matter, would mean that state trial courts may be free to violate constitutional rights, and state appellate and supreme courts may ignore and decline to acknowledge and preserve the Constitutional issues housing such violations (addressed by the litigants), barring review in this Court. Litigants whose federal Constitutional rights are violated in state trial court proceedings then would have no hope of having these claims addressed at all, especially after they have tried to have them addressed in state appellate courts.

In addition, federal courts have jurisdiction over actions where federal constitutional rights are at stake, regardless of the fact that these actions may be maintained in state courts or local D.C. courts. See Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971); Monroe v. Pape, 365 U.S. 167 (1961); Wilwording v. Swenson, 404 U.S. 249 (1971); Sullivan v. Murphy, 478 F.2d 938, 156 U.S.App.D.C. 28 (1973); cert. denied, 414 U.S. 880 (1973). 28 U.S.C. §2254 codifies an exception to this rule for cases in which the appellant seeks a writ of habeas corpus. Other exceptions include situations where the case hinges upon unresolved issues of state law, or if state remedial channels have not been utilized which would afford accessibility and the capability of granting a full measure of relief. Sullivan, id, Railroad Comm. v. Pullman Co., 312 U.S. 496 (1941); Askew v. Hargrave, 401 U.S. 476 (1971). See also Fay v. Noia, 372 U.S. 391 (1963): federal relief may be withheld from persons who have "deliberately bypassed the orderly procedure of the state courts."

In the instant case, Petitioners have not asked for writs of habeas corpus. The issues in Petitioners' case hinge on federal questions alone, namely: 1) whether the Circuit Court of Prince William County, Virginia, violated the Sixth and Fourteenth Amendment rights of Appellants when it barred them from presenting their defense and witnesses relevant to the abortion issue as it related to their trespass charge; and 2) whether the circuit court violated the Fourteenth amendment equal protection rights of Petitioners by barring the testimony and evidence in question from the trial on the basis of the Petitioners' status as prolife criminal defendants whose arrest and preference of criminal charges arose out of their prolife activity. There were no state questions to resolve in this matter.

Finally, there was no failure to utilize state remedial channels which were accessible and capable of granting full relief. In Sullivan, the court found that the plaintiffs, antiwar demonstrators who were subject to irregular D.C. police procedures with respect to arrests and convictions (due to the large number of such demonstrators at the events in question), were justified in proceeding to seek federal district court review of their claims that the collateral bond they posted should be returned, and that their arrest records should be expunged, as Fourth and Fifth Amendment rights were violated in the creation of the arrest situations which spawned these claims in the first place. They were justified because of their

> "assertion that, because of misinformation circulated to the arrestees at the time they posted bond, large numbers of them were frustrated either deliberately or unintentionally -- in their efforts to secure procedural due process

with respect to the forfeitures of collateral." Id., at 963-4.

With respect to the expungement issue, the court's analysis is more on point for purposes of the instant case:

> ". . . Plaintiffs' motion for expungement was made at a time when the vast majority of criminal cases arising from the May Day arrests were still pending in the D.C. Superior Court and when the criminal liability of the individual arrestees had had not been determined. While Plaintiffs' motion for expungement of arrest records did not fully ripen until the local criminal proceedings had been brought to a conclusion, they were entitled to press a provisional claim, prohibiting dissemination of the arrest records meanwhile." Id.

In other words, the request for expungement responds to the results of constitutional error which was carried by local courts; therefore, according to the court in Sullivan, the federal court may have jurisdiction over the claim. (Note that in this case, an injunction was being sought in federal district court to bar dissemination of the demonstrators' arrest records during the interim between the trial court determinations and the next level court appellate hearing. Sullivan refutes the grounds largely upon which the Court of Appeals denies federal jurisdiction over Petitioners' claim.)

In the instant case, Petitioners Craddock and Lytle (and a third litigant, Gordon Strunk, not a party to this action) did appeal the decision of the circuit court to the Virginia Court of Appeals and the Virginia Supreme Court. While Petitioners raised one of the

federal constitutional issues (the Sixth Amendment issue) in their appellate briefs in the state court appeals, the state courts patently ignored and failed to preserve this issue.

The Virginia Court of Appeals, in an unpublished memorandum of August 24, 1993, (App. E) never mentioned the federal constitutional issue in its opinion affirming the convictions. The opinion never even mentioned that it would rule on independent state grounds alone. Craddock, et.al. v. Manassas, Court of Appeals No. 0958-92-4. Petitioners had indeed raised the constitutional question both in briefs and oral argument before the Virginia Court of Appeals. Thus, the Virginia Supreme Court declined to hear Petitioners' appeal from the Virginia Court of Appeals, for reason that "the decision of the Court of Appeals does not involve a substantial constitutional question as a determinative issue or matters of significant precedential value" (App. H). In other words, the state "remedial channels" dried up affirmatively, in a way which foreclosed accessibility and relief definitively with respect to the federal question which arose from the conduct of the trial court proceedings. The Virginia appeals court declined to mention the constitutional issue raised by Petitioners, thus leading the state supreme court to dismiss the appeal due to the lack of a constitutional question in the appeals court's decision. Hence, Petitioners are entitled to federal review of the constitutional questions arising out of their trial court proceedings, since their attempts to utilize state remedial channels (appeals to state courts) proved both inaccessible and incapable of affording a full measure of relief. Sullivan, id.

On the matter of the injunction sought by Petitioners, note that it was not sought to enjoin state

court proceedings, as such would contradict 28 U.S.C. §2283. Nor are appellants asking the federal court to enjoin prosecution of our case, as such would contradict the holding in Younger v. Harris, 401 U.S. 37 (1971). Petitioners asked the District Court to enjoin collection and accrual of the fine which resulted from the unconstitutional state trial proceedings.[3] The Court in Sullivan recognized that federal courts have jurisdiction to enjoin state action which flows from court proceedings the constitutionality of which is being questioned in federal court. Sullivan, id., at 965 (the court held that the district court could enjoin dissemination of arrest records pending the outcome of the appeal to D.C. Superior Court, in order to maintain a peaceable status quo). By requesting injunction of collection and accrual of the fines, Petitioners (who cannot afford to pay it at this time) simply wish to maintain a peacable status quo pending the decision as to the constitutional propriety of the trial conduct which spawned the fines.

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[3] As a preliminary matter, pursuant to FRCP 65, Petitioners have requested an injunction to issue against the Respondent, the Circuit Court of Prince William County, to prevent Respondent from enforcing, collecting, increasing (via interest), or demanding from Plaintiffs payments of their respective $2500 fines--which are in question in this case--pending the final outcome and disposition of this case. The injunction would:

- preserve the status quo--i.e., non-payment of the fines, the legality of which are being questioned in this case;
- avoid the irreparable harm which the fines would place upon the Petitioners (financially), before the merits could be decided;
- grant equity where no adequate remedy of law could;
- cause no harm to Respondent which would counterbalance the harm Petitioners would suffer in the absence of the injunction;
- accord with the likelihood of success on the merits which this case enjoys; and
- not injure the public interest.

The import of granting certiorari in this matter is the protection of litigants' rights to "a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts." Bounds v. Smith, 430 U.S. 817 (1977), at 825. If state courts may simply ignore and fail to preserve properly[4] (without reason) federal questions raised by appellants, then the United States Supreme Court will find itself presented with appeals from state courts containing no federal question to decide. Hence, review of federal questions arising out of trial proceedings can be effectively estopped, permanently, if litigants are barred from raising such federal questions in federal district courts. Raising such questions is remedial, and not an exercise in "forum shopping." Petitioners are not merely dissatisfied with their loss in state courts, and thus seeking the possibility of a "win" in federal courts. Rather, Petitioners are seeking to press their federal constitutional claim, and with that, to urge federal courts not to allow state courts to permanently snuff out federal questions which arise out of trial court proceedings. Such squelching on the part of state courts yields a green light to state trial courts to violate the constitutional rights of litigants with total impunity.

2. The Court of Appeals Denied Petitioners' Rights to Access to the Courts by Affirming the District Court's Erroneous Dismissal of Petitioners' Initial Complaint.

"Because a [28 U.S.C.] §1915(d) dismissal is not a dismissal on the merits, but rather an

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[4] Cf. Michigan v. Long, 463 U.S. 1032 (1983).

> exercise of the court's discretion under the in forma pauperis statute, the dismissal does not prejudice the filing of a paid complaint making the same allegations. It could, however, have a res judicata effect on frivolousness determinations for future in forma pauperis petitions. . . Therefore, if it appears that frivolous factual allegations could be remedied through more specific pleading, a court of appeals reviewing a §1915(d) disposition should consider whether the district court abused its discretion by dismissing the complaint with prejudice or without leave to amend." Denton v. Hernandez, 504 U.S. 25 (1992).

What was 28 U.S.C. §1915(d) is now §1915(e). This new version of the rule indicates that federal courts may dismiss cases "at any time," "notwithstanding any filing fee, or any portion thereof, that may have been paid," upon a determination that "allegation of poverty is untrue" or the action is "frivolous or malicious." Id. This revision to §1915(d) (which allowed for sua sponte dismissal as frivolous only for in forma pauperis complaints) took effect shortly after Petitioners filed their complaint in District Court, and shortly before the District Court dismissed Petitioners' complaint with prejudice for frivolousness. However, the language still presupposes reference to in forma pauperis complaints. This presupposition is seen in the words which state that the court may dismiss if "(A) the allegation of poverty is untrue; or (B) the action or appeal -- (i) is frivolous or malicious . . ." 28 U.S.C. §1915(e)(2)(A), (B)(i). This language is part and parcel of an entire statute devoted to procedures for dealing with in forma pauperis complaints. Therefore, the discussion of dismissals for

frivolousness must refer to the overall context of the statute, which discusses in forma pauperis complaints in particular. The references to filing fees being paid must of necessity relate to the context of in forma pauperis filings. The legislative history of the amendment does not clarify its meaning.

O'Brien v. U.S. Dept. of Justice, 927 F.Supp. 382 (1995), aff'd. 76 F.3rd 387 (9th Cir. 1996), states affirmatively that courts cannot dismiss a claim sua sponte on its merits for frivolousness unless the complaint was filed in forma pauperis. The only case that grants federal district courts the right to dismiss a paying complainant's claim for frivolousness, is Foliety v. Cervantes, 861 F.Supp. 63 (1994). This case upheld a court's dismissal of a claim where the complaint was incomprehensible, and contained nothing which would indicate the existence of subject matter jurisdiction in federal courts. Even in this case, the dismissal was without prejudice (dismissal of Petitioners' claim was with prejudice). If indeed there is conflict over the meaning of §1915(e), then Petitioners would urge this Court to strike down the amendment (construed as giving courts unfettered discretion to dismiss even paid complaints sua sponte as frivolous) and reaffirm the traditional rule.

Neitzke v. Williams, 490 U.S. 319 (1989), at 324-31; Deutch v. U.S., 67 F.3rd 1080 (3rd Cir. 1995); and O'Brien, indicate that the rationale of the original §1915(d) allowing sua sponte dismissal of frivolous in forma pauperis complaints was to prevent abuse of the federal judicial system, such abuse being inflicted by litigants who cannot be deterred by the filing fees. Id. Congress did not intend initially for the in forma pauperis statute to apply to paying complainants (who are presumed to be deterred from

filing frivolous complaints by the costs of filing).[5] To depart from the traditional "free market" approach of the original rule gives courts broader leeway to deny litigants access to the courts, when those litigants may happen to file complaints that the judges disfavor for whatever reason.

If the statute is to be construed as giving federal courts the same discretion to dismiss cases sua sponte for paying complainants as indigent complainants, for egalitarian purposes, then Neitzke

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[5] Additional problems with the District Court's dismissal include the following:

♦ The Court decided incorrectly that Plaintiffs failed to file the complaint on time. The Court assumed that Plaintiffs did not pay the filing charge on time. Plaintiffs paid before what they mistakenly thought was the deadline. The Clerk of the Court claims that no payment was sent at that time, and informed Plaintiffs of this after the (mistaken) deadline. The Court assumed that the Clerk was correct, rather than considering the factual dispute. Even if the Court did not conclude that the filing charge was paid on time, the Court should have taken the dispute into account and filed the complaint without the filing fee (collecting it at a later date). As for the problem of the xeroxed signatures, again, the Court should have filed the complaint and collected (and compared, perhaps) original signatures at a later date, rather than refusing to file (these errors were harmless). The refusal to file had the effect of wrongfully denying Plaintiffs the right to access to the courts.

♦ The Court applied the wrong law by holding to the 42 U.S.C. §1983 statute of limitations, when the complaint was filed under the Sixth and Fourteenth amendments to the federal constitution. Plaintiffs never mentioned §1983 in their complaint, though they did apply the §1983 four year statute of limitations in error. That error led to their request for exception to the statute of limitations. Plaintiffs argue that the Court did not have to abide by Plaintiffs' error. The Court should have recognized that suits (such as this) arising under the Sixth and Fourteenth amendments are not subject to a four year statute of limitations, and then proceeded to allow the litigation to continue.

counters such an approach:

> "To conflate the standards of frivolousness and failure to state a claim, as petitioners urge, would thus deny indigent plaintiffs the practical protections against unwarranted dismissal generally accorded paying plaintiffs under the Federal Rules." Id., at 330.

Holding that an informa pauperis complaint could not be dismissed sua sponte as frivolous for the reason that it failed to state a claim upon which relief could be granted, Neitzke urges equality between paying and nonpaying litigants in the sense of both having equal opportunity for access to the courts, to seek redress of their constitutional claims. To construe the revisions to the statute as the District Court has in the instant case (against Petitioners) would be to strive for the goal of equality in the lack of access to the courts, between paying and nonpaying complainants.

In addition, this Court has typically construed pro se complaints more liberally, thus avoiding sua sponte dismissals of such complaints as frivolous. Haines v. Kerner, 404 U.S. 519 (1972); Boag v. MacDougall, 454 U.S. 364 (1982); Neitzke, id. Along these lines, the District Court failed to consider as grounds for relief that Plaintiffs may only support the factuality of some of their allegations[6] by what they

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[6] Petitioners' contention warranting discovery is that Respondent discriminated against them in violation of the equal protection clause of the Fourteenth Amendment to the federal constitution. Petitioners allege, and will attempt to establish by discovery (when the status of this litigation is settled), that the Respondent effected this discrimination by treating the Petitioners differently than other criminal defendants (at the trial level) who have been brought before the court.

would obtain via discovery (after being allowed to proceed with their litigation), and also that Plaintiffs may only demonstrate fully the legal basis for their complaint if allowed to proceed (i.e. by submitting a brief, at that stage). By short-circuiting the case with a sua sponte dismissal as frivolous (which means that the complaint lacks bases in fact and law), the District Court reasons circularly by not allowing the Plaintiffs to demonstrate such bases. On the Sixth Amendment matter, this Court can determine for itself whether a basis exists in law for Petitioners' complaint, or whether it is lacking such as to warrant a sua sponte dismissal as frivolous, even when construed liberally.

II. PETITIONERS WERE DEPRIVED OF THEIR SIXTH AND FOURTEENTH AMENDMENT RIGHTS TO PRESENT THEIR TESTIMONY AND

Petitioners allege that the Respondent's denial of their Sixth and Fourteenth Amendment rights (discussed infra) subjected them to a deprivation of their constitutional right to a fair trial, in a manner which is not inflicted upon other types of criminal defendants at the trial level.

Petitioners allege that the discrimination is based on their status as criminal defendants at the trial level whose adjudged activity arose out of their opposition to abortion. With this allegation, Petitioners claim that criminal defendants on trial for activity which did not arise out of opposition to abortion are not deprived of Constitutional rights in a similar way in the conduct of the trial by the Defendant.

Petitioners claim that the right denied them--the right to a fair trial--is a fundamental right (see Chambers v. Mississippi, 410 U.S. 284 (1973)) which would place the burden of proof upon Respondent to show that its discriminatory deprivation of Petitioners' rights was narrowly tailored to serve a compelling interest. Alternatively, Petitioners assert that even if the Court finds that no fundamental right has been violated, the Respondent's discrimination against the Plaintiffs is not rationally related to any legitimate governmental purpose. See Riggins v. Nevada, 504 U.S. 127 (1992).

WITNESSES FOR THEIR DEFENSE TO THE JURY, WHEN THE RESPONDENT GRANTED MOTIONS TO EXCLUDE SUCH TESTIMONY FROM THE TRIER OF FACT.

"Few rights are more fundamental than that of an accused to present witnesses in his own defense, . . . Indeed, this right is an essential attribute of the adversary system itself. . . The right to compel a witness' presence in the courtroom could not protect the integrity of the adversary process if it did not embrace the right to have the witness' testimony heard by the trier of fact. The right to offer testimony is thus grounded in the Sixth Amendment even though it is not expressly described in so many words . . ." Taylor v. Illinois, 484 U.S. 400 (1988), at 408-9.

The Petitioners argue that their right to obtain "witnesses in [their] favor," and to fully present their defense to the jury, both arise under the Sixth Amendment to the federal constitution (and the Fourteenth Amendment which applies the Sixth Amendment to the states) as fundamental rights, and were violated by the Respondent. Petitioners argue that the jury should have had the opportunity to decide whether the "necessity defense" was proper -- upon such a finding, the jury could have acquitted the Plaintiffs. See U.S. v. Datcher, 830 F.Supp 411 (M.D. Tenn. 1993).

Washington v. Texas, 388 U.S. 14 (1967), struck down a Texas statute which prevented co-defendants from testifying on each other's behalf:

"We hold that the petitioner in this case was

> denied his right to have compulsory process for obtaining witnesses in his favor because the State arbitrarily denied him the right to put on the stand a witness who was physically and mentally capable of testifying to events that he had personally observed, and whose testimony would have been relevant and material to the defense (footnote omitted). The Framers of the Constitution did not intend to commit the futile act of giving to a defendant the right to secure the attendance of witnesses whose testimony he had no right to use. The judgment of conviction must be reversed." Id., at 23.

In Petitioners' initial trial, in Respondent's court, the prosecutor of the Petitioners sought to bar their testimony, evidence, and witnesses (supporting their "necessity defense") which they sought to present to the jury, because, in his words, the testimony was irrelevant to the trespass issue, it dealt with matters already decided by legislatures (i.e., the legality of abortion), and would prejudice the presentation of the case. Petitioners submit that the testimony is relevant (according to the common law definition of relevance); it was material evidence and testimony which would tend to prove or disprove a fact at issue, namely, whether Petitioners' trespass reflected their good faith beliefs that they were protecting human lives from imminent harm by virtue of their trespass.[7] It was sheer speculation which led to the conclusion that prejudice would ensue from the Petitioners presenting

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[7] Cf. Bell v. Maryland, 378 U.S. 226 (1964), with respect to the proposition that "trespass" is somewhat of a relative concept – viz., the law can make it an exercise of a right, instead of merely a crime, depending on the particular circumstances surrounding the act.

their defense. If that were a rule of evidence accross the board, then no one could ever present evidence of mitigating factors related to crimes they have committed.

Cheek v. U.S., 498 U.S. 192 (1991), a tax case, held that a person's good faith belief that he was not violating tax law need not be objectively reasonable to potentially negate willfulness (thereby, in this case, shifting the burden of proof to the government to show that the defendant was aware of his legal duty). Consequently:

> "It was therefore error to instruct the jury to disregard evidence of Cheek's understanding that, within the meaning of the tax laws, he was not a person required to file a return or to pay income taxes and that wages are not taxable income, as incredible as such misunderstandings of and beliefs about the law might be." Id., at 203-4.

In the instant case, it was error to keep from the jury evidence showing why Petitioners' believe that life begins at conception, no matter how "incredible" many find that belief. Petitioners' view that life begins at conception is material to the issue of trespass because that view fueled the Petitioners' actions, as well as their contention that they deserve acquittal (i.e., they trespassed only to save lives).

The testimony and evidence that abortions were taking place at the clinic in question on the day in question, that human life begins at conception, and that Petitioners "trespassed" to save human lives from imminent death and harm, would have served to inform the jury's determination of the guilt or innocence of the Petitioners. In U.S. v. Datcher, 830

F.Supp 411 (1993), the court held that a defendant could argue the issue of his sentence to the jury, though he would do so with hope that the jury would acquit (deeming the sentence too harsh):

> "Argument against allowing the jury to hear information that might lead to nullification evinces a fear that the jury might actually serve its primary purpose, that is, it evinces a fear that the community might in fact think a law unjust. The government, whose duty it is to seek justice and not merely conviction, Berger v. U.S., 295 U.S. 78 (1935), should not shy away from having a jury know the full facts and law of a case." Datcher, id., at 415.

While no one is urging jury nullification, juries do have that right, as part of their function in trials, and Petitioners argue that they should hear the full testimony presented by the defense.

> "The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies. Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This is a fundamental element of due process of law." Washington, id., at 19.

The Petitioners' legal premises -- that their right

to obtain "witnesses in [their] favor," and to fully present their defense to the jury, both arise under the Sixth (and Fourteenth) Amendment, and were violated by Respondent -- rest upon a close interpretive look at the words of the Sixth Amendment, as well as agreement with several decisions of this Court. While the amendment words these issues as rights to "trial, by an impartial jury," rights "to have compulsory process for obtaining witnesses in his favor," and rights "to have the Assistance of Counsel for his defence," Plaintiffs contend that the emphasis should not be construed to fall solely upon the words "compulsory process" and "assistance of counsel," with respect to the framing of constitutional rights. These rights necessarily depend upon other parts of the clauses (i.e., ". . . obtaining witnesses in his favor" and ". . . for his defence." In other words, the right to compulsory process would be of no effect without the right to obtain witnesses in one's favor. Similarly, the right to assistance of counsel is of no effect without the right to present a defense. And a right to trial by jury is of no effect if the jury cannot hear the full defenses of the defendant.

Moreover, existing law on the issue of abortion would not have been offended by leaving to the jury the task of deciding whether Plaintiffs' contention that life begins at conception was sufficient to warrant their acquittal. Roe v. Wade, 410 U.S. 113 (1973) declined to answer the specific question of when life begins. This case reached its result by establishing the lack of precedential authority for the proposition that a fetus was entitled to constitutional protection (a different issue than the issue of when life begins). Id. at 157-59.

Plaintiffs would note that to make a rule that the Sixth and Fourteenth Amendments require that a

state trial court grant defendants the right to fully state their defenses and present their evidence would not offend the Tenth Amendment, or the concept of federalism, any moreso than did the holdings in Gideon v. Wainwright, 372 U.S. 335 (1963) and Miranda vs. Arizona, 384 U.S. 436 (1966).

RELIEF SOUGHT

Petitioners seek one of two alternate remedies:
a) rule that the United States Court of Appeals for the Fourth Circuit and the District Court dismissed Petitioners' complaint in error, and remand to the District Court (or the Court of Appeals) with instructions to hear and decide the case (and the request for injunction) on the merits; or
b) rule that the Court of Appeals and the District Court dismissed the case in error, and then proceed to decide the case on the merits.

A decision on the merits favorable to Petitioners would be to declare the Respondent's acts unconstitutional, to dismiss the case and vacate their fines and convictions, or in the alternative, to remand the case to the Prince William County Circuit Court with instructions to allow Petitioners the opportunity to fully state their defense and present witnesses and evidence to this end, enjoining the court from barring such testimony.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 96-1910

JASON R. CRADDOCK; DAVID J. LYTLE, Plaintiffs-Appellants,

v.

THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY, VIRGINIA, Defendant-Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. James C. Cacheris, Chief District Judge. (CA-96-628-A)

Submitted: February 25, 1997
Decided: April 17, 1997

Before WILKINS, NIEMEYER, AND WILLIAMS, CIRCUIT JUDGES.

Affirmed by unpublished per curiam opinion.

PER CURIAM:

Jason R. Craddock and David J. Lytle appeal the district court's dismissal of their complaint as frivololous. Because the district court was without subject matter jurisdiction to consider this action, we affirm.

In 1992 Craddock and Lytle were convicted in the Circuit Court of Prince William County, Virginia, of trespassing at an abortion clinic. They were fined $2500 each. In May 1996, they filed the instant action, asserting that the trial judge erred in limiting evidence at trial. Craddock and Lytle contended that

the court's rulings deprived them of their right to mount an effective defense. They sought declaratory relief, dismissal of their criminal case, and vacatur of the fines. The district court dismissed the action with prejudice upon a frivolity determination.

Federal district courts and courts of appeals have no jurisdiction to review a final judgment of a state court that has acted in its judicial capacity. Such jurisdiction lies only with the United States Supreme Court. D.C. Court App. v. Feldman, 460 U.S. 462, 482 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-6 (1923). In the subject case, Craddock and Lytle attempted to obtain review of a state court judgment in federal district court by framing their claim as a violation of the Constitution. Such an attempt flies in the face of Feldman.[1]

Because the district court lacked jurisdiction to entertain the claims, we affirm the dismissal of this action as frivolous. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

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[1] The record does not suggest that Craddock or Lytle are, or ever have been, in custody; therefore, this action does not sound in habeas corpus. See 28 U.S.C. §2254, amended by Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214; Wright v. Bailey, 544 F.2d 737, 740 (4th Cir. 1976).

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 96-1910

JASON R. CRADDOCK; DAVID J. LYTLE, Plaintiffs-Appellants,

v.

THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY, VIRGINIA, Defendant-Appellee.

ORDER

Appellant has filed a petition for rehearing. The Court denies the petition for rehearing.

For the Court,
/s/ Patricia S. Connor, Clerk

APPENDIX C

IN THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF VIRGINIA, ALEXANDRIA DIVISION
Civil Action No. _____

Jason R. Craddock, David J. Lytle; Plaintiffs;
vs.
The Circuit Court of Prince William County, Virginia; Defendant.

COMPLAINT

JURISDICTION

This court has jurisdiction over the subject matter of this complaint because the controversy therein arises under the Sixth and Fourteenth Amendments to the United States Constitution. 28 U.S.C. §1331.

STATEMENT OF FACTS

On November 23, 1991, the two Plaintiffs (hereinafter "Plaintiffs") sat in front of the entrance to the Prince William Women's Clinic (hereinafter "Clinic"), an abortion facility in Manassas, VA. The Plaintiffs blocked the entrance intending to prevent women from entering the clinic to procure abortions. The Plaintiffs never engaged in violence. Within hours, the Plaintiffs were arrested for trespass. On April 3, 1992, a jury convicted the Plaintiffs of trespass. The Plaintiffs were fined $2500 each.

The controversy out of which this complaint arises stems from the jury trial. Just prior to the trial, presiding Prince William County Circuit Court Judge Richard Potter granted two motions in limine to the trial's prosecutor, Manassas City Attorney Peter Steketee (transcript of Trial, pp. 43-

45).

The first requested that the court enter "an order excluding from the trial of this case any testimony and evidence, documentary or otherwise, as to whether abortions were or were not being conducted on the premises" of the clinic November 23, 1991. Steketee filed this motion for the reason that this evidence relates to matter which he considered "not an issue in this case and the introduction of any evidence relating to said abortions in said facility, whether conducted or not, could be prejudicial to the trier of this case; . . . is irrelevant and immaterial."

The second motion asked the court to order the exclusion of "any testimony and evidence, documentary or otherwise, from any physician or professional health care provider, or any other person, as to whether an abortion constitutes the taking of a life, murder, assault, or any other crime." This motion was made for reason that "[t]he law in Virginia is clear and without equivocation that abortions conducted and performed in accordance with said law are permissible and within the law." The motion further states that such testimony and evidence (specifically that of a health care provider) is "irrelevant, immaterial, and contrary to the laws of [Virginia] and could be prejudicial to the trier of this case."

The trial issue presented to the jury was thus limited to the question of whether or not the Plaintiffs were guilty of trespass on November 23, 1991. The motions in limine effectively barred the Plaintiffs from 1) presenting their defense to the jury, and 2) presenting witnesses and evidence on their behalf. These two items are elements of fundamental rights under the Sixth Amendment to the United States Constitution.

The "defense" would have been articulated as follows:

* in good faith, the Plaintiffs believe that human life and personhood begin at the point of conception;
* trespassing for the sake of saving human lives is not unlawful;
* the Plaintiffs trespassed upon the Clinic property for the sole purpose of saving the lives of human beings (preborn children) whom they knew would be killed via abortion; and
* the Plaintiffs would have testified and demonstrated to the effect that 1) their "action was necessary to avoid an imminent threatened harm," 2) there was "a lack of other adequate means to avoid the threatened harm," 3) and there was "a direct causal relationship that may be reasonably anticipated between the action taken and the avoidance of harm." Buckley v. City of Falls Church, 371 S.E.2d 827, 827-28 (1988) (citing U.S. v. Cassidy, 616 F.2d 101, 102 (4th Cir. 1979)).

The presentation of this defense was barred by the granting of the motions in limine. The above "defense" would have been offered with the support of the following testimony and evidence:

* records of the Clinic showing that abortions indeed took place on November 23, 1991 (when Plaintiffs blocked the Clinic entrance); and
* a physician would have given testimony and evidence to the effect that human life begins at conception, thus substantiating the reasonableness of the Plaintiffs' beliefs that their trespass purported to save actual lives from imminent death.

The presentation of this evidence and testimony was barred by the motions in limine, as well as a motion to quash a subpoena duces tecum served on the clinic (which requested records of Clinic activity on November 23, 1991) --both of which

motions were granted by Judge Potter.

COMPLAINT

1. Plaintiffs claim that the presentation of such testimony could have led to their acquittal. The jury could have acquitted the Plaintiffs via the doctrine of jury nullification, if it so found the Plaiintiffs' aforestated beliefs about abortion to be reasonable and in good faith (sufficient to warrant their trespasses). United States v. Datcher, 830 F.Supp 411 (M.D. Tenn. 1993).

At the very least, the Sixth Amendment grants to Plaintiffs the right to present his defense, and witnesses and evidence supporting that defense.

Further, the core of the Plaintiffs' contention, namely the idea that life begins at conception, was a question that the Supreme Court declined to answer when legalizing abortion. Roe v. Wade, 410 U.S. 113, 157-9 (1973). The Court attempted to rationalize its holding by distinguishing between "life" and "constitutional personhood." Id. In other words, the Court effectively stated that the question of when life begins is not in issue; rather, the question is: does precedential Constitutional and judicial inference say life begins before birth? The Court answered that question in the negative. However, the source of the inference relates back to the question of when life begins. Thus, their ruling is based on a premise containing an unanswered fundamental question.

In this complaint, the Plaintiffs allege that the jury should have been able to view the medical evidence (which Plaintiffs' witness would have presented) to determine when life begins as a matter of fact (for the purpose of assessing the reasonableness of Plaintiffs' actions). Acquittal of

Plaintiffs might have "nullified" the law set forth by Roe, but it would have articulated an answer to a fundamental question which the Supreme Court declined to answer while deciding Roe.

2. Plaintiffs allege that the Defendant court discriminated against them in violation of the Equal Protection Clause of the Fourteenth Amendment. The Court effected this discrimination by treating the Plaintiiffs differently than other criminal defendants (at the trial level) who have been brought before the court. The Plaintiffs alleges that the Defendant court denied them their fundamental Sixth Amendment rights to a fair trial (to present their defense, to call witnesses and offer evidence for their case), while this same court treats other criminal defendants in a nondiscriminatory, Constitutional manner.

Plaintiffs allege that the discrimination is based on their status as criminal defendants at the trial level whose adjudged activity arose out of their opposition to abortion. With this allegation, Plaintiffs claim that criminal defendants on trial for activity which did not arise out of opposition to abortion are not deprived of Constitutional rights (at the trial level) by the Defendant.

Plaintiffs claim that the Defendant's discrimination against them took the form of a violation of their fundamental right to a fair trial. Thus, Plaintiffs would place the burden of proof on Defendant to show that its discriminatory treatment of Plaintiffs is narrowly tailored to serve a compelling interest.

Alternatively, Plaintiffs assert that even if no fundamental right has been violated, the Defendant's discrimination against them is not rationally related to any legitimate governmental purpose.

RELIEF SOUGHT

Plaintiffs pray this Court to declare the Defendant's acts unconstitutional, to dismiss the case and vacate their fines and convictions, or in the alternative, to remand the case to the Prince William County Circuit Court with instructions to allow Plaintiffs the opportunity to fully state their defense and present witnesses and evidence to this end -- enjoining the court from barring such testimony.

Respectfully submitted this 30th day of March, 1996.

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APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

JASON R. CRADDOCK, et al, Plaintiff
v.
THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY, VIRGINIA, Defendant

CIVIL ACTION NO. 96-628-A

ORDER

THIS MATTER having come on for hearing pursuant to the Request for Exception to the statute of limitations and upon reviewing the request for Injunction and the Complaint, it appearing to the Court that the Complaint is frivolous, it is accordingly ORDERED:

(1) that the Request for Exception to the statute of limitations is DENIED.

(2) Plaintiffs' Complaint is DISMISSED with prejudice. Should plaintiffs wish to appeal, they must file a written Notice of Appeal with the Clerk of this Court within thirty (30) days of the date of entry of this Order.

(3) The Clerk shall forward copies of this Order to plaintiffs, Pro Se, and to defendant.

/s/ James C. Cacheris
United States District Judge

Alexandria, Va.
May 9, 1996

APPENDIX E

COURT OF APPEALS OF VIRGINIA

Record No. 0958-92-4

JASON R. CRADDOCK, ET AL.

v.

CITY OF MANASSAS

FROM THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

Richard B. Potter, Judge

Present: Judges Barrow, Coleman, and Koontz
Argued at Alexandria, Va.

MEMORANDUM OPINION* BY JUDGE SAM W. COLEMAN III

David J. Lytle, pro se; Gordon F. Strunk; (Jason Craddock, pro se, on briefs), for appellants.

Peter W. Steketee (Robert W. Bendall; Smith & Davenport, on brief), for apellee.

Appellants, Jason R. Craddock, David J. Lytle, and Gordon F. Strunk, were comvicted in a jury trial of trespass, for which they were fined $2500 each. We hold that the trial judge did not err by granting the Commonwealth's two motions in limine barring the appellants from presenting evidence in support of their defense that the trespass arose out of the necessity to save human lives. Accordingly, we affirm the convictions.

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* Pursuant to Code § 17-116.010 this opinion is not designated for publication.

The elements of the defense of necessity include: "(1) a reasonable belief that the action was necessar to avoid an imminent threatened harm; (2) a lack of other adequate means to avoid the threatened harm; and (3) a direct causal relationship that may be reasonably anticipated between the action taken and the avoidance of harm." Buckley v. City of Falls Church, 371 S.E.2d 827 (1988) (citing United States v. Cassidy, 616 F.2d 101, 102 (4th Cir. 1979)). In order for the defense of necessity to apply, the defendant must first demonstrate the existence of a legally cognizable harm which he or she sought to prevent. (Citations omitted.)

Roe v. Wade, 410 U.S. 113 (1973), and its progeny recognize that a woman has a constitutional right to terminate a pregnancy. That right is not absolute; it is limited by the state's countervailing right to regulate abortions in order to protect the welfare of persons recognized under the Constitution. In conformity with the principles set forth in Roe v. Wade, the Virginia legislature adopted a statutory scheme regulating the performance of abortion. Code §§ 18.2-71.

The appellants have not demonstrated a legally recognized harm that they sought to prevent by blocking passage into the Prince William Women's Clinic. Although the defendants sincerely regard the result of all abortions to be a harm, namely the taking of a life, both the United States Supreme Court and the Virginia legislature have granted women the right to terminate a pregnancy under certain specified conditions. The law will not excuse the crime of trespass for the purpose of interfering with another person's exercise of his or her own legal and constitutional rights. Because the harm sought to be prevented by the appellants is not recognized as an injury under the law, the defense of necessity is unavailable. The trial judge, therefore, properly

refused the appellants the opportunity to raise the defense of necessity and to present medical evidence in support of that defense that life begins at conception. We reject the appellants' claim that the jury should be entitled to determine as a matter of fact when life begins. See Roe v. Wade, 410 U.S. 113 (1973); Code §§ 18.2-71 et seq.

The appellants also were not entitled to raise the defense of necessity on the theory that they were attempting to prevent illegally performed abortions at the Women's Clinic. No evidence in the record proved that illegal abortions were taking place at the time of the trespass, thus creating an "imminent" threatened harm, or that other non-criminal measures were unavailable to accomplish the appellants' purpose. See Buckley 371 S.E.2d at 828.

For these reasons, we affirm the appellants' convictions of trespass.

Affirmed.

APPENDIX F

MEMORANDUM

TO: Judges Barrow, Coleman, and Koontz
FROM: Jason R. Craddock
RE: Craddock v. Manassas - Record No. 0958-92-4
DATE: August 30, 1993

I am writing to request a rehearing en banc regarding our trial concerning a trespass upon the grounds of the Prince William Women's Clinic.

The legal issue that we raised as the basis for our initial appeal, namely that our right under the Sixth Amendment to the United States Constitution to present witnesses for our defense was denied by Circuit Court trial judge Richard Potter, was nowhere addressed in the opinion of the Court of Appeals which affirmed the conviction aganst us.

The premise of our challenge was that we were denied a fair trial. We were thus denied because our Sixth Amendment rights insuring such fairness were denied. To ignore this legal issue in deciding against us further denies such fairness in our trial proceedings.

A second matter concerns the fact that the opinion of the Court of Appeals does not demonstrate how our case failed to meet the criteria established by Buckley v. City of Falls Church.

Considering these errors in juddgment, I am asking that your honor would grant a rehearing en banc to Jason Craddock, David Lytle, and Gordon Strunk in the case against the City of Manassas.

Respectfully submitted,
/s/ Jason R. Craddock
/s/ David J. Lytle
/s/ Gordon F. Strunk

APPENDIX G

IN THE COURT OF APPEALS OF VIRGINIA
On Thursday the 23rd day of September, 1993

Record No. 0958-92-4

Jason R. Craddock, et al.

v.

City of Manassas

Upon Petition of the appellants to set aside the judgment rendered herein on the 24th day of August, 1993 and grant a rehearing en banc thereof, the said petition is denied on the grounds that there is no dissent in the panel decision, no member of the panel has certified that the decision is in conflict with a prior decision of the Court, nor has a majority of the Court determined that it is appropriate to grant the petition for rehearing en banc in this case. Code § 17-116.02(D).

A Copy, Teste: /s/ Cynthia McCoy (Acting Clerk)

APPENDIX H

IN THE SUPREME COURT OF VIRGINIA

Thursday, March 3, 1994

Record No. 931560

Jason Craddock, et al.,

against

City of Manassas,

From the Court of Appeals of Virginia

Finding that the petition for appeal does not comply with the requirements of Rule 5:17(c) and that the decision of the Court of Appeals does not involve a substantial constitutional question as a determinative issue or matters of significant precedential value, the Court dismisses the petition for appeal filed in the above styled case. Code § 17-116.07(A)(1) and (B).

A Copy, Teste: /s/ David B. Beach, Deputy Clerk

APPENDIX J

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

CITY OF MANASSAS

v.

JASON CRADDOCK
DAVID LYTLE
GORDON STRUNK
Defendants

Transcript of Trial of April 3, 1992 (relevant portions).

At this trial:
Peter Steketee represented Manassas.
William Findler represented David Lytle and Jason Craddock.
Joseph Hitselberger represented Gordon Strunk.

***(Mr. Steketee brings his motions in limine before the court)
MR. STEKETEE: Last evening I was benefitted by a telephone call from counsel and informed at that time that it was their intention to present testimony today before this court in the trials of these matters from a physician; and the testimony *** intent was to present the evidence from this physician to the effect that abortion constitutes the taking of a life.
I have expanded my request for the motion in limine to include not just that, but anything that might even come close to that.

The reasons for that are *** that I suggest to the court they are not relevant to this proceeding today; that they are immaterial to this proceeding, and even furthermore, the issue of an abortion being the taking of a life is one which has been addressed by our legislature and the Commonwealth; and its laws do mnake provision for abortion. ***

The individuals who are before your honor, who will stand before the jury, are charged with a simple trespass offense. Trespass is alleged to have occurred on November 23 of 1991. It will be our burden to demonstrate that, in fact, they were there on the property, had been warned either by a sign or by some other means verbally to depart. And that is it. It is a simple, straightforward trespass case.

We can make this a political forum. We can make this a legislative forum, but doing so is irrelevant to the real charges and the matter before the court and the jury today. We would suggest that the motion in limine is properly stated in order that this matter may proceed in a proper and repectful fashion to the charge that's before the court, and in order that we not compromise this matter and in some way prejudice the proper airing and presentation of this case.

We ask for a granting of our motion in limine.

THE COURT: Mr. Findler.

MR. FINDLER: **It's our intention , your honor, today to put on what's called a necessity of defense (sic), which has been recognized by courts all over the country for a long time. Specifically, there is a case in Virginia which recognized the necessity of defense (sic); it's Buckley v. Falls Church.

And that defense says there are three elements to the necessity of defense: that you can, in fact, commit a

crime that would otherwise be a crime in order to prevent a greater harm from taking place. And of course, one of the examples that's always used is somebody drowning ina swimming pool. I might trespass on someone's property to save someone from drowning in a swimming pool. I mighteven break down a fence or break down a gate to get in, and that would constitute another offence; but I've prevented the greater harm of somebody dying or being injured. **

**We had Dr. Solano, who is board certified OB-GYN and practices in Arlington County, who is prepared to testify to his expertise and experience and his training and knowledge, in particular with respect to fetal development, that an unborn infant as early as five or six weeks has recognizable brain waves, a beating heart; and shortly thereafter, they can be seen and heard; and all the indicia of a human life. And that, in fact, human life begins at conception.

We would then present testimony from the defendants that they had a reasonable, good-faith belief in those facts of fetal development; that their belief that life begins at conception, that a human life was being taken with every abortion that took place at the abortion clinic. We will also present evidence that there were, in fact, abortions scheduled for that day. ** (T)he fact that these people were sitting in front of the door of the clinic preventing people from going in would directly cause, or prohibit I guess I should say, the wrong from taking place or the imminent harm as the Buckley case requires, the harm to this unborn child from taking place.

Now the Buckley case said in that particular case and the facts of that case that the necessity of defense was not available to those defendants, and I can tell you why. I tried that case, or one of the attorneys

who tried that case; and the testimony in that case was that those people ** testified that they were on the grounds of that abortion clinic in the city of Falls Church on that date; they were handing out literature; they were trying to talk to the people who were going into the clinic . . .**

These people ** here today ** will testify that they were there not to talk to anybody, but to physically prohibit the imminent harm from taking place. And that's the distinction in the Buckley case.**

THE COURT: **I'm willing to grant the motion in limine.** (G)iven what the defense intends to prove, that that motion in limine is in order. ** My ruling, in effect, will be that you can make that proffer on the record at the conclusion of the proceedings; but I believe the motion in limine with regards to the ** exclusion of the physical or health care provider's conclusion to the effect that abortions constitute the taking of a life is a murder or a crime, is in order and is granted.

And that, secondly, that the defense of necessity based on the proffer I've received from the defendant thus far should also be denied; in essence, that the testimony should be limited to the issues of trespass that are involved in this case.